

BY: forFILED  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

2005 MAR -7 P 2:54

U.S. DISTRICT COURT  
DISTRICT OF MASS.  
05-10440 PBS  
UNITED STATE OF AMERICA

vs.

Dkt. No. 1:03cr10183-  
001(PBS)

GUERRE ELIAS

X

MAGISTRATE JUDGE New Judge

MOTION FOR A MODIFICATION AND CORRECTION  
OF SENTENCE, PURSUANT TO 18USC 3742(f)(1)  
AND 35 82(c)(2).

Petitioner Guerra-Elias in the above titled cause pro se having been sentenced before this Honorable District Court Judge P.B. Saris on the charged offense, Illegal re-entry after been deported in violation of the United States Code.

COMES NOW Petitioner, ~~A~~ Elias Guerra and respectfully moves this District Court for a modification and correction of the sentence imposed upon petitioner.

1). This District Court has erred and failed to adhere with caution and improperly sentenced petitioner above the prescribed required sentencing range as to the offense committed.

2). Evidently the erroneous categorization of the offense level allows petitioner to face a greater severity of imprisonment and lost of liberty.

3). The enhancement from the base offense level ("8") was inappropriately calculated.

Petitioner asserts that his return to the United States based upon the difficulties of every day cite in his native country. However, petitioner regretted for such actions.

Please see e.g., United States v. Whittaker, 999 F.2d 38,41 (Cir, 1993). The plain language of the statute, however, provides three separate occasions upon which a previously deported alien may commit the offense. On this Court record, petitioner had made it known to his then appointed counsel and to this Honorable District Court that his return to the United States after been deported, was based solely on family relationship and responsibilities affairs all in good faith.

Petitioner is fully aware of the committed offense with the acceptance of responsibility and has pleaded to the offense with the understanding that petitioner sentence calculated sentence would be between the range of 15 months to 27 months.

The United States Supreme Court has made it clear that all district courts must base their findings upon facts of ascertainment, accuracy and sufficiency of evidence.

Unquestionable, petitioner counsel failed to provide adequate assistance of counsel and to assured petitioner of a more appropriate and moderate sentence under the circumstances of the offense petitioner made his plea.

In the interest of justice and justifiable consideration petitioner herefore respectfully moves this Honorable District Court to resentence petitioner to a lesser sentence or to modify the sentence imposed.

Respectfully Submitted,

Elias Guerra  
Elias Guerra

Sworn to and subscribed before me a notary public on this day 15<sup>th</sup> February, 2005, as a true document bearing under the full penalty of perjury.

Michelle Gonyea  
Notary Public

Elias Guerra

MICHELLE GONYEA  
Notary Public, State of New York  
No. 01GO6071700  
Qualified in Franklin County  
My Commission Expires March 25, 2006

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CLERK'S OFFICE

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vs.

ELIAS GUERRA

Dkt. No. 1:03cr10183  
001-(PBS)

CERTIFICATE OF SERVICE

I Elias Guerra hereby certified that on this ~~21~~ day  
February 2005, I personally mailed a copy of this motion  
for a reconsideration of granting a reduction of sentence  
to the office of the United States District Attorney, Mr.  
Micheal L.J. Sullivan at one Court-House Way, Boston,  
MA 02210; Pursuant to 28 USC Section 1746.

Respectfully Submitted,

Elias Guerra  
Elias Guerra, #24777-038  
F.C.I. Ray Brook  
P.O. Box 9007  
Ray Brook, New York 12977